IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9403 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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LUNAWADA KELAVANI MANDAL

Versus

GUJARAT SECONDARY EDUCATION BOARD

Appearance:

1. Special Civil Application No. 9403 of 2000

MR R.M.Bhatt with MUKUND M DESAI for Petitioner No. 1

Mr.Deepak Dave Asst.GOVERNMENT PLEADER

with Mr.A.D.Oza, GP for Respondent No. 1

MR BM MANGUKIYA for Respondent No. 2

Mr.I.M.Pandya for Respondent No. 3

CORAM : MR.JUSTICE JAYANT PATEL

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Date of decision: 03/04/2002

ORAL JUDGEMENT

This petition is filed by the petitioner which is

a trust running school challenging the decision of the Gujarat Secondary Education Department, dated 25.8.2000 whereby the permission is granted to respondent No.2 to open the new school.

2. Heard Mr.R.M.Bhatt for Mr.M.M.Desai for petitioner, Mr.Deepak Dave, Ld.AGP with Mr.A.D.Oza, GP for respondent 1, Mr.Mangukia for respondent No.2 and Mr.I.M.Pandya for respondent No.3.

3. Mr.Bhatt for the petitioner submits that the impugned order has been passed in breach of Regulation 9(16) in as much as once the school was already in existence no permission for opening another school should have been granted by the Board. He also submitted that since the petitioner is an aggrieved party it was obligatory for the authority to give opportunity of hearing. However, no hearing has been given and therefore the petitioner contended that if the other school is allowed to continue it would result into unhealthy competition and therefore they are constrained to approach this court challenging the impugned order.

4. On behalf of the respondent No.1 Mr.Dave submitted that the report of the District Primary Education Officer was called for and it has come on record that there are about 14 primary schools and therefore in comparison to the same secondary schools are less in number. Not only that on behalf of respondent No.3 affidavit in reply is filed by one Babulal Hiralal Nina, Dist.Education Officer, Godhra and in the said affidavit in reply on para 8 it has been stated as under:

> "I say and submit that in Lunawada every year, i.e. at the time of commencement of education, there are so many problems created at the time admission/s of students. It is the complaint of the parents that some schools are not giving giving admissions without donation. So, in this situation if new school will start by the management without grant then it is nothing in wrong to give permission to start new school in the interest of students and Govt."

Further, at para 10 of the affidavit it has been stated as under:

> "While granting permission, the Board has considered the aspect that another school which is already running with secondary classes will

not be disturbed and also the teachers who are teaching should not remain work (extra). Therefore, if the respondent No.2 new school start then not any employee or management will going to suffer any harm and in that case the decision of the Board is correct."

5. Considering the facts and circumstances of the case, I am of the view that the petitioner school was granted permission since last 40 years and is running the school and it is 100% grant school. So far as the respondent No.2 school is concerned, it is without any grant . The petitioner who is running school since last 40 years can not insist that no other school should be established in a place though the number of students have increased and though it has come on record that about 14 primary schools are in existence. Not only that but when the grant is not admissible the new School the Government is not likely to suffer and on the contrary students will be benefited when number of educational institutions are established in the area. Further more, these are administrative decisions of the State Govt where normally this court would not interfere with unless breach of statutory provisions is pointed out.

6. The contention raised by the petitioner is that Regulation ((16) is not complied with. A perusal of Regulation 9(16) shows that in normal circumstances it should not be permitted. The fact that the petitioner is running the school since last 40 years itself shows that by afflux of time number of students must have been increased and the need for availability of education at the secondary level. Therefore the regulation can not be read so as to be a total ban on the permission to open new school. As regards question of hearing is concerned no material is produced on record to show as to how and in what manner the petitioners are likely to suffer if the new school is permitted and on the contrary in view of the affidavit in reply filed on behalf of the DEO, it has come on record that no prejudice is going to be caused to the petitioner and if no prejudice is likely to be caused to the petitioners certainly question of hearing would arise. In any event, if the secondary education in the area is the necessity of students and keeping in view that the grant would not be admissible to the new school this court would not like to interfere with in exercise of powers under Article 226/227 of the Constitution.

7. Mr.Dave appearing for respondent No.2 stated that pursuant to the impugned order the school has

already started and therefore the said order should not be interferred with at the instance of the petitioner. Since the school of the respondent No.2 has already started I am of the view that interference with the order would prejudice large number of students studying in the respondent No.2 school and therefore there is one more reason not to interfere with the impugned order passed by the authority.

8. In view of the aforesaid, this petition is dismissed. Rule is discharged with no order as to costs.

3.4.2002 (JAYANT PATEL,J)